

if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

B. No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under Section 208(b) of the Act.

C. No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under Section 403(c) of the Act.

D. Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of Section 318 of the Act, violate Section 301 of the Act.

E. Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[Comment: Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of Section 404 of the Act.]

F. Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995).

### **Subchapter J. Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology under Section 301(k) of the Act—Reserved**

### **Subchapter K. Criteria and Standards for Determining Fundamentally Different Factors under Sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the Act**

#### **§2501. Purpose and Scope**

A. This Subchapter establishes the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under Sections 301 and 304 of the Act (hereinafter referred to as "national limits") should be

imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This Subchapter applies to all national limitations promulgated under Sections 301 and 304 of the Act, except for the BPT limits contained in 40 CFR 423.12 (steam electric generating point source category).

B. In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in Sections 304(b) and 304(g) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under 40 CFR 122.21(l)(1). In addition, such a variance may be proposed by the Director in the draft permit.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995).

#### **§2503. Criteria**

A. A request for the establishment of effluent limitations under this Subchapter (fundamentally different factors variance) shall be approved only if:

1. there is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

2. factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

3. the request for alternative effluent limitations or standards is made in accordance with the procedural requirements of LAC 33:IX.Chapter 23.Subchapters E-G.

B. A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

1. the alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

2. the alternative effluent limitation or standard will ensure compliance with Sections 208(e) and 301(b)(1)(C) of the Act; and

3. compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

a. a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

C. A request for alternative limits more stringent than required by national limits shall be approved only if:

1. the alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

2. compliance with the alternative effluent limitation or standard would not result in:

a. a removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

b. a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

D. Factors which may be considered fundamentally different are:

1. the nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[Comment: (1). In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2). Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under LAC 33:IX.2503.A. Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on Section 402(a)(1) of the Act. See LAC 33:IX.2469.C.2.]

2. the volume of the discharger's process wastewater and effluent discharged;

3. non-water quality environmental impact of control and treatment of the discharger's raw waste load;

4. energy requirements of the application of control and treatment technology;

5. age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

6. cost of compliance with required control technology.

E. A variance request or portion of such a request under this Section shall not be granted on any of the following grounds:

1. the infeasibility of installing the required waste treatment equipment within the time the Act allows;

[Comment: Under this Section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of Sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

2. the assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in LAC 33:IX.2503.D;

[Comment: Review of the administrator's action in promulgating national limits is available only through the judicial review procedures set forth in Section 509(b) of the Act.]

3. the discharger's ability to pay for the required waste treatment; or

4. the impact of a discharge on local receiving water quality.

F. Nothing in this Section shall be construed to impair the right of the state or any locality under Section 510 of the Act to impose more stringent limitations than those required by Federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:1524 (November 1997).

#### **§2505. Method of Application**

A. Written request for a variance under this Subchapter shall be submitted in duplicate to the state administrative authority in accordance with LAC 33:IX.2331.L.1 and LAC 33:IX.2405.

B. The burden is on the person requesting the variance to explain that:

1. factor(s) listed in LAC 33:IX.2503.B regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and

information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

2. the alternative limitations requested are justified by the fundamental difference alleged in LAC 33:IX.2503; and

3. the appropriate requirements of LAC 33:IX.2501.B have been met.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:473 (March 2002).

## Subchapter L. Criteria for Determining Alternative Effluent Limitations under Section 316(a) of the Act

### §2511. Purpose and Scope

A. Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of Section 301 or Section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water."

B. This Subchapter describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under Section 316(a) of the Act in permits issued under Section 402(a) of the Act.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995).

### §2513. Definitions

For the purpose of this Subchapter:

**Alternative Effluent Limitations**—all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under Section 316(a) of the Act and this Subchapter.

**Balanced, Indigenous Community**—is synonymous with the term *balanced, indigenous population* in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with Section 301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to Section 316(a) of the Act.

**Representative Important Species**—species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular 2074(B)(3) and (4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995).

### §2515. Early Screening of Applications for Section 316(a) of the Act Variances

A. Any initial application for a Section 316(a) of the Act variance shall include the following early screening information:

1. a description of the alternative effluent limitation requested;

2. a general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

3. a general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

4. such data and information as may be available to assist the state administrative authority in selecting the appropriate representative important species.

B. After submitting the early screening information under LAC 33:IX.2515.A, the discharger shall consult with the state administrative authority at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger